UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/099,977	03/19/2002	Francis Emmerson	367.41233X00	5510

20457 7590 09/19/2005		EXAMINER
ANTONELLI, TERRY, STOUT & KRAUS, LLP		BAYERL, RAYMOND J
1300 NORTH SEVENTEENTH STREET		

ART UNIT	PAPER NUMBER
2173	

ANTONELLI, TERRY, STOUT & KRAUS, LLP
1300 NORTH SEVENTEENTH STREET
SUITE 1800
ARLINGTON, VA 22209-3873

DATE MAILED: 09/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

	Application No.	Applicant(s)
Office Action Summary	10/099,977	EMMERSON ET AL.
	Examiner	Art Unit
	Raymond J. Bayerl	2173

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>05 July 2005</u>.

2a)☒ This action is **FINAL.**   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>13 - 24</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>13 - 24</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on <u>19 March 2002</u> is/are: a)☒ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☒ All   b)☐ Some * c)☐ None of:

      1.☒ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.

5) ☐ Notice of Informal Patent Application (PTO-152)

6) ☐ Other: _____.

1.   The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

2.   Claim 20 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The phrase "directly requesting content via a sub-menu embedded in the menu application stored at a server" suffers from the misplaced modifier "stored at a server"— does applicant mean that the "content" is "stored at a server" or that "the menu application" is? To expedite prosecution, the Examiner presumes that it is the "content" that is "stored at a server", for the specification lacks emphasis on the "menu application" being in fact stored there.

3.   Claims 13 – 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roke Manor Research Limited ("Roke Manor"; GB #2 349 548 A) in view of Red Fig Limited ("Red Fig"; GB #2 344 491 A).

As per independent claim 13, directed to a "client-server system" (see also independent claim 14), Roke Manor's <u>Downloading software to mobile telecommunication users</u> discloses a "client terminal" in the form of a "portable radio communication device" and "authentication means" comprising "means for checking validation data of content downloaded from the server".   As seen in fig 1, <u>network subscribers 16</u> <u>using a variety of mobile communication devices such as mobile phone or PDAs</u> are permitted to contact a <u>network operator 12 via a base station</u> (see page 4, paragraphs 1, 2), so that <u>software</u> is sent to the <u>subscriber</u> site. Then, "content

downloaded from a server" is subject to "validation" by "checking", by means of <u>an</u>

<u>authentication code</u> <u>which enables the Java™ class software to run</u>. In receiving this

<u>authentication code</u>, the Roke Manor "device" receives "validation data being

associated with said content so as to be identifiable by said authentication means as

originating from the said server", since only the correct "server" for Roke Manor's

<u>software</u> would have the correct <u>authentication code</u>.

Roke Manor further teaches the use of "menu applications" that provide "a user

selectable direct download link", in the form of a <u>list</u> that <u>may appear in a menu type</u>

<u>format</u> (page 5, paragraph 3). Such a <u>list</u> will invariably appear as "a sub-menu"

"embedded" in the overall "menu" hierarchy of the <u>mobile communication device</u>. Once

the Roke Manor <u>subscriber 16</u> has made a selection, it is properly enabled by the

<u>authentication code</u>, which permits the "client terminal" to know that the "user" is

properly established in accepting and running the <u>software</u> that has been "downloaded"

as "content" from the "server".

Roke Manor, while identically disclosing the use of a <u>Java™</u> platform for

retrieved <u>software</u>, does not **explicitly** teach that a "browser application controls the

radio communication device to transmit a signal to connect to the server". However,

Red Fig specifically discloses <u>Browsing the Internet using a mobile telephone</u>, so as to

obtain <u>Variable data for HTML pages</u>, accessed via <u>a URL</u> (Abstract). A <u>server process</u>

<u>30</u> in Red Fig (see pages 7 – 8; fig 2) responds to the <u>URL</u>. <u>HTML pages</u> are an

example of "content" that may be directly "downloaded from the server" in Red Fig.

Thus, it would have been obvious to a person having ordinary skill in the art at the time of applicant's invention to operate the user-selectable interface for software retrieval found in Roke Manor via Red Fig's "browser", so that the standard formats of both HTML and Java would have a well-understood channel by which to pass, in obtaining "content" at a "radio communication"-linked site.

When Roke Manor has acquired, authenticated, and installed the software obtained by a subscriber, "storing the downloaded content to a memory of the terminal" takes place, as "default" (claims 15, 21).

In the combination of Roke Manor and Red Fig, a "download transport protocol" of "HTTP" is used (as in Red Fig), and Roke Manor's use of an authentication code reads upon the claimed "header" (claims 16, 22 - 24), since in an HTTP environment such as Red Fig's, the code for a page has the authentication information incorporated into it in a way that it leads other portions of the page and is a "header".

Independent claim 17 (see also independent claim 19) contains limitations generally found in independent claims 13, 14 as noted above, including "menu applications" and "a user selectable direct download link" (Roke Manor), along with a "browser application" that "controls the radio communication device to transmit a signal to connect to the server" (Red Fig).

Independent claim 18 is rejected for a similar line of reasoning to that developed for claim 17, with its "security checking" further reading upon Roke Manor's authentication code. This ability to "determine whether or not the downloaded content is from a trusted server" (independent claim 20) has been treated with respect to claim 13

above—in authenticating at the receiving end the user's entitlement to operate the

<u>software</u>, Roke Manor is also allowing the "client terminal" to verify that the sender is

indeed the one intended.

4.   Applicant's arguments filed 5 July 2005 have been fully considered but they are

not persuasive.

        After summarizing the disclosure of Roke Manor in the paragraphs bridging

pages 9 – 10, applicant argues at page 10 that "[t]his subject matter does not meet the

limitation of the sub-menu in which the user selects a direct download link from the sub-

menu resulting in the browser application controlling the radio communications system

to communicate with the server". However, the items selected from a Roke Manor <u>list</u>

can be readily seen as being shown on what is in fact a "sub-menu" of the overall

mobile device hierarchy. From this list, the Roke Manor user can pick <u>software</u> directly

that is to be downloaded. Operation within the context of a "browser" is then further

suggested by Red Fig, about which applicant provides the blank statement at page 10

that "this subject matter does not cure the deficiencies noted above with respect to

Roke Manor."

        Applicant then argues at page 10 that "[w]hile Roke Manor does disclose an

authentication code being transmitted from the network operator which enables JAVA

client software to run", "it is submitted that this does not meet the aforementioned

limitation regarding validation data", "being associated with the content so as to be

identifiable by the authentication means originating from the server." However, the

Roke Manor mobile device indisputably possesses an "authentication means" when it

handles an <u>authentication code</u>. By recognition of this <u>code</u> in conjunction with the downloaded <u>software</u>, Roke Manor's mobile device can recognize that the correct server has in fact transmitted the correct code, so that the server is therefore "identifiable" by the "validation data".

As per "storing the downloaded content to a memory of the terminal as a default memory setting" (claims 15, 21), applicant argues at page 11 that such a limitation "is not met by Roke Manor for the reasons set forth above." However, in installing a Roke Manor <u>software</u> application, the "memory" of the device has the code received put in place in a manner that makes it the "default" for performing that application.

Regarding claims 16, 22 – 24, applicant argues at page 11 that the Examiner's reading of Roke Manor upon "a download transport protocol HTTP header", in which "the authentication means examines said header" "is erroneous since a header is used for information transmission of a packet which would not be considered by a person of ordinary skill in the art to be a 'authentication code'". Applicant requests that "he demonstrate on the record where an authentication code could be read upon a header". However, in giving the limitations actually recited in the claims a reasonably broad interpretation, the <u>authentication code</u> of Roke Manor appears within an <u>HTTP</u> page, when taken in view of Red Fig. This <u>code</u> necessarily precedes the final rendering of objects in the <u>software</u>, and is thus to be viewed as a "header" that is first examined by "the authentication means", in the course of implementing the downloaded Roke Manor <u>software</u>.

5.   Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

6.   Any inquiry concerning this communication or earlier communications from the examiner should be directed to Raymond J. Bayerl whose telephone number is (571) 272-4045. The examiner can normally be reached on M - Th from 9:00 AM to 4:00 PM ET.

7.   If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Cabeca, can be reached on (571) 272-4048. All patent application related correspondence transmitted by FAX **must be directed** to the central FAX number (571) 273-8300.

8.   Any inquiry of a general nature or relating to the status of this application or

proceeding should be directed to the receptionist whose telephone number is (571) 272-

2100.

RAYMOND J. BAYERL
PRIMARY EXAMINER
ART UNIT 2173
7 September 2005